



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

September 30, 1994

Ms. Kimberly Young  
Legal Assistant  
Texas Department of Protective  
and Regulatory Services  
P.O. Box 149030  
Austin, Texas 78714-9030

OR94-627

Dear Ms. Young:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 27242.

The Department of Protective and Regulatory Services (the "department") has received a request for twenty-one separate categories of information. You state that the department currently is working with the requestor to clarify his requests and will provide him with most of the requested information "insofar as it is available through the Department." You object, however, to the release of the sixth item the requestor seeks, specifically:

[A] list of all foster families in the State of Texas currently certified by Child Protective Services of the [department] as therapeutic foster homes in which children in the conservatorship of Child Protective Services can be fostered and receive medical, psychiatric, or psychological treatment during their stay.

You believe that this information is confidential under the common law.

Section 552.101 of the Government Code excepts from required public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Section 552.101 thus incorporates other statutory provisions that make specified documents confidential.<sup>1</sup> Additionally, it incorporates the doctrines of constitutional and common-law privacy.

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<sup>1</sup> You have not cited any statutes that, in conjunction with section 552.101 of the Government Code, might except this information from required public disclosure. Ordinarily, the attorney general will

The Texas Supreme Court, in *Industrial Foundation v. Texas Industrial Accident Board*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977), articulated a two-pronged test that we use to determine whether information is confidential under the doctrine of common-law privacy and therefore exempt from required public disclosure under section 552.101. Under the test, information is confidential if (1) it contains highly intimate or embarrassing facts about an individual's private affairs such that the release of the information would be highly offensive to a reasonable person and (2) the public has no legitimate interest in it. *Industrial Found.*, 540 S.W.2d at 685.

The fact that a family is a foster family certified as a therapeutic foster home is not a highly intimate or embarrassing fact about an individual's private affairs. Accordingly, the common-law privacy doctrine does not protect the requested information. Additionally, we believe the public has a legitimate interest in the information. Section 552.101 of the Government Code does not authorize the department to withhold the requested information from the requestor; the department must, therefore, release the information.

Because case law and prior published open records decisions resolve your request, we are resolving this matter with an informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please contact this office.

Yours very truly,



Kimberly K. Oltrogge  
Assistant Attorney General  
Open Government Section

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(Footnote continued)

not raise an exception on behalf of a governmental body unless the exception protects confidential information. See Open Records Decision No. 481 (1987) at 2. A person who distributes confidential information commits a misdemeanor punishable by a fine of not more than \$1,000, confinement in a county jail for not more than six months, or both. Gov't Code § 552.352.

Title 40 of the Texas Administrative Code section 700.102 deems confidential "[i]nformation about a child protective services client" and prohibits the release of such information "except as authorized by statute, federal regulation, court direction, attorney general's opinion, and [departmental] rules concerning disclosure of information and confidentiality of information in Chapter 734 of this title." Section 734.11(a) of title 40 deems confidential "[i]nformation collected in determining initial or continuing eligibility to receive assistance or services"; however, under subsection (b), the restriction on disclosing information is limited to "individuals and their circumstances." We are uncertain whether any of the information requested here falls within the scope of either section 700.102 or section 734.11. (We will assume, for purposes of this decision, that these rules are valid.) If the information falls within one of these sections, the department must either withhold or deidentify the information, depending upon the regulation that applies. Again, the improper release of confidential information constitutes a misdemeanor.

Ref.: ID# 27242

Enclosures: Submitted documents

cc: Mr. Andrew Prough  
1606 Thornridge  
Austin, Texas 78758  
(w/o enclosures)